**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

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| **KTT, LLC** | **v.** | **BOARD OF ASSESSORS OF THE TOWN OF SWANSEA** |
| Docket No. F322736 | | Promulgated: October 13, 2016 |

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the appellee, the Board of Assessors of the Town of Swansea ("appellee" or "assessors"), to abate a tax on certain personal property in the Town of Swansea assessed to KTT, LLC ("KTT" or "appellant") under G.L. c. 59, §§ 11 and 38 for fiscal year 2014 ("fiscal year at issue").

Commissioner Good heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Chmielinski joined her in the decision for the appellant.

These findings of fact and report are made pursuant to requests by both the appellant and the appellee to G.L. c. 58A, § 13 and 831 CMR 1.32.

*Nicholas D. Bernier*, Esq. for the appellant.

*Michael R. Siddall*, Esq. and *Allison B. Turner*, Esq. for the appellee.

## FINDINGS OF FACT AND REPORT

Based on the testimony and documentary evidence entered into the record at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

### I. Ownership and Jurisdiction

This appeal involves the taxation of personal property, namely the solar panels, racking, and related equipment (collectively, the "subject property") that compose a solar farm located on an approximately 65-acre parcel of land on Baker Road (the "Baker parcel") in Swansea. The evidence showed that the owner of the subject property on January 1, 2013 was Baker Road Solar Farm, LLC, while the owner of the Baker parcel was the appellant. Both entities were managed by Kerri A. Cabral, who testified at the hearing of this appeal, and the Board found her testimony to be credible.

Ms. Cabral explained that she is the manager of both KTT and Baker Road Solar Farm, LLC, and that she operates those entities with her husband, Timothy Cabral. The Baker parcel is located across the street from the Cabrals' personal residence at 222 Baker Road. Ms. Cabral testified that she and her husband had owned the Baker parcel, which was a large and unimproved tract of land, for several years. She stated that they were interested in making use of the Baker parcel but wished to do so in a way that would benefit the environment.

They therefore eschewed residential development of the Baker parcel, and instead, around 2010 or 2011, embarked on efforts to build a solar farm.

The record in the present appeal indicated that although the subject property was at all times owned by Baker Road Solar Farm, LLC, the assessors assessed taxes on the subject property to KTT for the fiscal year at issue. The assessors initially valued the subject property at $3,533,855, and assessed tax thereon, at the rate of $23.44 per thousand, in the total amount of $82,833.56.[1] The appellant paid the tax due without incurring interest. On January 29, 2014, the appellant timely filed an Application for Abatement, contending that the subject property was exempt under G.L. c. 59, § 5, cl. 45 ("Clause Forty-Fifth"), and also overvalued. On February 19, 2014, the assessors voted to grant a partial abatement, reducing the assessed value of the subject property to $1,212,502. Not satisfied with this abatement, the appellant timely filed an appeal with the Board on May 8, 2014.

At the hearing of this appeal, the assessors challenged the standing of the appellant to bring this appeal, as it was not the subject property's owner of record. The Board rejected this argument. The tax bill was issued to the appellant, and the appellant was therefore "[a] person upon whom a tax has been

[1] This amount is exclusive of an additional water district tax in the amount of $5,265.44.

assessed" under G.L. c. 59, § 59 and "a person aggrieved by the refusal of the assessors to abate a tax" for purposes of G.L. c. 59, § 64. Accordingly, the Board found and ruled that the appellant had standing to bring this appeal, and based on the foregoing dates, which complied with all of the statutory deadlines, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

**II. The Use of the Subject Property**

The evidence of record showed that Baker Road Solar Farm, LLC, entered into a purchase agreement ("the net-metering agreement") with Fall River Five Cents Savings Bank ("Bank"), which was headquartered in Fall River, Massachusetts, on May 31, 2013. Under the terms of the net-metering agreement, 98% of the electricity generated by the subject property would be credited to offset the electricity bills for four of the Bank's branch locations in Massachusetts, while 2% would be credited to offset the electricity bills of the Cabrals' personal residence at 222 Baker Road. In exchange for those credits, the Bank agreed to pay Baker Road Solar Farm, LLC 95% of the dollar value for the credited electricity appearing on the Bank's electricity bill from National Grid.

Property record cards for each of the five properties to which the net-metering agreement applied were also entered into

the record. Those record cards showed that each of the five properties was "taxable under" G.L. c. 59.

Based on the evidence of record, and as explained more fully in the Opinion below, the Board found that the subject property was exempt under the unambiguous language of Clause Forty-Fifth. Accordingly, the Board issued a decision for the appellant in this appeal, and granted an abatement of tax in the amount of $30,227.49, along with interest.

**OPINION**

All property, real and personal, situated within the Commonwealth is subject to local tax, unless expressly exempt. G.L. c. 59, § 2. Such an exemption is provided in Clause Forty-Fifth for a:

> solar or wind powered system or device which is being utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying the energy needs of property taxable under this chapter; provided, however, that the exemption under this clause shall be allowed only for a period of twenty years from the date of the installation of such system or device.

G. L. c. 59, § 5, cl. 45. A taxpayer seeking an exemption bears the burden of proving that the subject property qualifies "according to the express terms or the necessary implication of a statute providing the exemption." ***New England Forestry Foundation, Inc. v. Assessors of Hawley***, 468 Mass. 138, 148 (2014).

Courts interpret a statute in accordance with the plain meaning of its text. ***Reading Coop. Bank v. Suffolk Constr. Co.***, 464 Mass. 543, 547-48 (2013)(citing ***Massachusetts Community College Council MTA/NEA v. Labor Relations Comm'n,*** 402 Mass. 352, 354 (1988)). As the primary source of insight into the intent of the Legislature is the language of the statute, if the language of the statute is unambiguous, a court's function is to enforce the statute according to its terms. ***Id.*** at 548; ***International Fid. Ins. Co. v. Wilson***, 387 Mass. 841, 853 (1983).

There is nothing ambiguous in the language of Clause Forty-Fifth, and the plain meaning of its words requires only that the subject property be: (1) a solar or wind powered system or device; (2) utilized as a primary or auxiliary power system for the purpose of heating or otherwise supplying energy; and (3) utilized to supply the energy needs of property that is subject to Massachusetts property tax. Based on the evidence presented, the Board found and ruled that the subject property was at all material times a solar powered system within the meaning of Clause Forty-Fifth and used as a primary or auxiliary power system supplying the energy needs of property in Massachusetts that is taxable. Therefore, the Board found and ruled that the subject property conforms to all of the express requirements of Clause Forty-Fifth.

The facts of the present appeal are substantially similar to those in ***Forrestall Enterprises, Inc. v. Assessors of Westborough***, Mass. ATB Findings of Fact and Reports 2014-1025, which the Board also decided in favor of the taxpayer. In that case, the solar array at issue was used to generate power for several residential and business properties located on taxable parcels that were different than the parcel on which the solar array was located. As here, the taxpayer in ***Forrestall*** had entered into a net-metering agreement under which the credits for the power generated by the solar array were allocated among the various properties. ***Id.*** at 2014-1028.

The assessors in ***Forrestall*** urged the Board to construe Clause Forty-Fifth in a way that limited its application to solar arrays which supply power to property located on the same, or a contiguous, parcel as the solar array. ***Id.*** at 2014-1030. The basis for the assessors' argument in that case was that Clause Forty-Fifth should be construed as a personal exemption, like many of the other exemptions found within G.L. c. 59, § 5, such as clauses 37, 42, and 43, each of which are limited to a single residential property which is occupied as the domicile of the person eligible for the exemption. G.L. c. 59, § 5, cls. 37, 42, and 43. However, each of those clauses contains express language limiting the scope of the exemption to specific property, while Clause Forty-Fifth does not. The Board

therefore rejected the assessors' argument as it was without support in the statute. ***Forrestall*** at 2014-1030.

The key factual distinction between the present appeal and ***Forrestall*** is that here, the subject property is used primarily to supply energy to Bank branches, which are not owned by or affiliated with the appellant, in exchange for cash payments from the Bank.[2] The assessors argued that this type of commercial use was not what the Legislature intended to favor with an exemption in enacting Clause Forty-Fifth. Once again, the Board found and ruled that this argument lacked support in the statute. ***Id.*** at 2014-1037.

If the Legislature had meant to limit the scope of Clause Forty-Fifth to exempt only solar arrays which supply the energy needs of properties owned by the same taxpayer, it could easily have done so. *See* ***Anderson Street Associates v. City of Boston & another,*** 442 Mass. 812, 817 (2004) ("Had the Legislature intended G.L. c. 121A to guarantee tax concessions to be permanent, it could have included statutory language to that effect. It has done so elsewhere."); ***Commissioner of Revenue v. Cargill, Inc.***, 429 Mass. 79, 82 (1999) ("Had the Legislature intended to limit the credit in the manner advocated by the commissioner, it easily could have done so."). The Legislature

[2] The properties which benefitted from the solar array at issue in ***Forrestall*** were owned by Bruce Forrestall and two corporations of which he was the sole owner. ***Id.*** at 2014-1027-28.

has placed no such limitation in Clause Forty-Fifth, despite its presumed awareness of the Board's decision in ***Forrestall*** and its explicit language in other statutes relating to solar power, which expressly limits the applicable credit or exemption to a specific property. *See* ***Forrestall*** at 2014-1034. Where the Legislature has not included language in the statute expressing the limitation advocated by the assessors, the Board will not interpret the statute to impose such a limitation.

Similarly unpersuasive was the assessors' argument regarding an allegedly absurd result produced by a literal reading of Clause Forty-Fifth. In an attempt to demonstrate such a result, the assessors posited that if the appellant were a tax-exempt organization using solar panels to supply the energy needs of one of its own properties, the solar panels would not be exempt under Clause Forty-Fifth, according to the Board's reading of it, as they would not be supplying the energy needs of "property taxable" under Chapter 59. In this hypothetical, the solar panels of course would be exempt under G.L. c. 59, § 5, cl. 3, as the "personal property of a charitable organization." As the absurd result suggested by the assessors would not be the result at all, the Board rejected this argument.

In conclusion, on the basis of all of the evidence, the Board found and ruled that the subject property was exempt under Clause Forty-Fifth, and therefore issued a decision for the appellant in this appeal, and granted an abatement of $30,227.49, along with interest.

**THE APPELLATE TAX BOARD**

**By: _____**
**Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: _____**
**Clerk of the Board**